

CHAPTER 173  
UNIFORM WAIVER AND VARIANCE RULES

[Prior to 9/6/00, see 261—Ch 104]

**261—173.1(ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

**173.1(1) Definitions.**

“*Board*” or “*IDED board*” means the Iowa department of economic development board created by Iowa Code chapter 15.

“*Department*” or “*IDED*” means the Iowa department of economic development authorized by Iowa Code chapter 15.

“*Director*” means the director of the department of economic development or the director’s designee.

“*Director/board*” means either the director or the board depending on which one has decision-making authority pursuant to rule 173.2(ExecOrd11).

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.<sup>zl</sup>

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

**173.1(2) Authority.**

*a.* A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if (1) the department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

*b.* No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

**261—173.2(ExecOrd11) Director/board discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 8.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

**173.2(1) Criteria for waiver or variance.** The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

*a.* Application of the rule to the person at issue would result in hardship or injustice to that person; and

*b.* Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

**173.2(2) *Special waiver or variance rules not precluded.*** These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

**261—173.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.**

**173.3(1) *Application.*** All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**173.3(2) *Content of petition.*** A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.
- f. Any information known to the requester regarding the department's treatment of similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.
- h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

**173.3(3) *Burden of persuasion.*** When a petition is filed for a waiver or variance from a department rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver or variance.

**261—173.4(ExecOrd11) Notice.** The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

**261—173.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.**

**173.5(1) *Additional information.*** Prior to issuing an order granting or denying a waiver or variance, the director/board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

**173.5(2) *Hearing procedures.*** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

**173.5(3) *Ruling.*** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**173.5(4) *Conditions.*** The director/board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**173.5(5) *Time for ruling.*** The director/board shall grant or deny a petition for a waiver or variance as soon as practicable, but in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**173.5(6) *When deemed denied.*** Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

**173.5(7) *Service of order.*** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**261—173.6(ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

**261—173.7(ExecOrd11) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**261—173.8(ExecOrd11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**261—173.9(ExecOrd11) Defense.** After the director/board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**261—173.10(ExecOrd11,17A) Appeals.** Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A  
Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA DEPARTMENT  
OF ECONOMIC DEVELOPMENT

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Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER
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Requests for waiver or variance from a department rule shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver or variance) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver or variance is requested.
- c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.
- d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

*e.* Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

*f.* Provide information known to the petitioner regarding the department's treatment of similar cases.

*g.* Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

*h.* Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver or variance.

*i.* Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

*j.* Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

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Petitioner's signature

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Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The department may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

[Filed 6/23/00, Notice 1/12/00—published 7/12/00, effective 8/16/00]

[Filed without Notice 8/18/00—published 9/6/00, effective 10/11/00]